

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 599 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

NATVARLAL GORDHANDAS MODI SINCE DECEASED BY HIS HEIRS

Versus

CHANDULAL NANALAL DHOBI

Appearance:

for Petitioners
MR GOVIND V PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. The Judgment and Decree dated 28.3.1980 of City
Civil Court, Ahmedabad, has been challenged by the
defendants in this Appeal.

2. Brief facts giving rise to this Appeal are that the plaintiff - respondent filed Suit for permanent injunction restraining the defendants from putting up ventilators of different sizes at different places other than the places where the ventilators were earlier fixed by the defendants in their eastern wall, on the ground floor, first floor, 2nd floor and 3rd floor of their property bearing Survey No.2455 and also for declaration that the defendants have no right to put up new ventilators on these floors in the eastern back-wall of their property. Further declaration was sought that the defendants have no right to put up doors towards the aforesaid ventilators opening in the disputed chowk and also that the defendants have no right to put up doors on the ground floor in the eastern back-wall of their property. Mandatory injunction was also prayed for directing the defendants to close the aforesaid newly set-up ventilators and doors.

3. The plaintiffs - respondents purchased their property described in the plaint, more particularly Survey No.2467 from Rameshchandra Sarabhai Shah through registered Sale Deed dated 29.5.1961. The defendants also purchased their property bearing Survey No.2455 which is towards west of the plaintiff's survey number. In between these two properties there is a chowk measuring 21 ft. x 7 ft. to the west of Survey No.2469 belonging to the plaintiffs. This chowk is said to be exclusive property in the ownership of the plaintiffs. The possession of this chowk was also handed over to the plaintiffs by their vendors and since then the plaintiffs are in exclusive possession of the disputed chowk. In the property purchased by the defendants there were ventilators, etc. The defendants demolished their house and wanted to raise new construction by adding more ventilators, windows and doors in their eastern wall. According to the plaintiffs after demolition of the old house the defendants lost easementary right to receive air and light through ventilators in the eastern wall of their property. It was also the case of the plaintiffs that the defendants have no right to put up more ventilators in the newly constructed house nor they have any right to open doors towards the chowk belonging to the plaintiffs. In the original house of the defendants there were four small ventilators on the ground floor, two on the first floor, one on the second floor and one on the third floor. The defendants in their new eastern wall left more gaps on each floor for the purpose of putting up new ventilators and also wanted to open any door on the ground floor in their eastern wall. The Suit was therefore filed for the above reliefs.

4. The Suit was resisted on variety of grounds denying the allegation made in the plaint and it was pleaded that the Suit is liable to be dismissed inasmuch as the disputed chowk does not belong to the plaintiffs. In the alternative it was pleaded that the defendants have right of easement and to receive air and light through ventilators and doors.

5. The trial Court repelled the defence plea and decreed the Suit, hence this Appeal.

6. The list was revised four times, but none appeared for the respondent. As such learned Counsel for the appellant Shri R.N.Shah was heard and the Judgment under Appeal was examined.

7. The first point for consideration in this Appeal is whether the disputed chowk described in Para : 2 of the plaint belongs to the plaintiffs. Admittedly the plot number of the plaintiffs' plot is 2469 whereas Survey Number of the defendant's plot is 2455. The plot of the defendants is towards west of the plaintiffs' plot. The chowk measuring 21 x 7 ft. intervenes these two plots. These Survey numbers were purchased by the parties through Sale Deeds of different dates. The Sale Deed of the plaintiffs is dated 29.5.1961, whereas the Sale deed in favour of the defendants is dated 30.1.1973. After comparing the two sale Deeds and also considering the oral evidence on record I find that the trial Court has rightly answered and held that the disputed chowk forms part of the plaintiffs' property purchased through Sale Deed dated 29.5.1961. Shri R.N.Shah could not point out from the evidence on record that this finding of the trial Court suffers from any error of fact or law or misappreciation of evidence, oral as well as documentary, on record. As such it is held that the disputed chowk belongs to the plaintiffs and the findings recorded by the trial court therefore do not require any interference in this Appeal.

8. The second point for consideration is whether the defendants after demolishing their old house have right to set up a new door towards disputed chowk belonging to the plaintiffs and have also right to set up more appurture for ventilators of different sizes on different floors of the newly constructed house. On this point also the evidence on record has been examined. Shri R.N.Shah for the appellants could not point out any defect in the findings recorded by the trial Court on this point. Of course, if the old house was demolished

the defendants in their new house could have put up only those ventilators which were existing originally in the eastern wall of their house. After demolition they did not acquire additional easementary right to receive air and light through additional ventilators. The Trial Court was, therefore, justified in holding that the defendants had already enough ventilators in their old house for receiving air and light and this easementary right could not be extended legally by opening more ventilators in the eastern wall. If the right of easement was perfected for receiving air and light through eight ventilators, that easementary right could not be enhanced by putting more ventilators. Likewise the defendants could not be permitted to open new door towards the disputed chowk. The report of the Commissioner was rightly considered by the trial Court so also the oral evidence of the parties on the point. The findings recorded by the trial Court in these circumstances appear to be perfectly justified and require no interference.

9. The trial Court has likewise correctly held that there is permanent change in the defendant's property Survey No.2455 which has materially increased the burden on the plaintiffs' property. The burden is obvious. The defendants cannot be permitted to open new door towards the disputed chowk, nor they can be permitted to use the new door on their eastern wall for ingress and egress. The lawful enjoyment of the plaintiffs' property will therefore be burdened. It will also add to the burden on the plaintiffs property because more ventilators are likely to be put up on the eastern wall of the defendants' house. As such this finding of the trial Court also requires no interference. Nothing could be shown from the evidence by Shri R.N.Shah for the appellant that the findings of the trial Court on Issue No.4 are in any way erroneous.

10. Likewise on Issue No.5 the findings of the trial Court are justified from the evidence on record, oral as well as documentary, and also from the report of the Commissioner. It is established that the defendants have put up a new door on the ground floor which opens towards the disputed chowk and this has been done during the pendency of the Suit. Consequently the defendants are not entitled to change the user of their house to the detriment of the plaintiffs' disputed chowk. Again Shri R.N.Shah for the appellant failed to point out from the evidence on record that this finding of the trial Court suffers from any manifest error of law or fact.

11. The findings of the trial Court on Issue No.6 are also correct and require no interference. While answering Issue No.1 the trial Court found that the disputed chowk is the property belonging to the plaintiffs which was purchased through Sale Deed dated 29.5.1961. The trial Court rightly found that the disputed chowk does not form part of the defendant's property purchased through Sale Deed dated 31.1.1973. This finding has been returned after comparative study the two Sale Deeds, examination of commissioner's map and report and also upon considering the oral and other documentary evidence on record.

12. Since the trial Court did not record any findings in favour of the defendants it was justified in decreeing the Suit of the plaintiffs. Consequently the judgment and Decree of the trial Court have to be confirmed. I do not find any merit in this Appeal which is hereby dismissed with no order as to costs.

sd/-

Date : March 21, 2000 (D. C. Srivastava, J.)

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